



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

July 11, 2016

Mr. Edwin Cordero, D.C.
President
Sherman College of Chiropractic
2020 State Road, 771
Boiling Springs, SC 29316

RE: OCR Complaint No. 11-15-2074
Resolution Letter

Dear Mr. Cordero:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on February 13, 2015 against Sherman College of Chiropractic (the College). The complaint alleged that the College discriminated and retaliated against the Complainant based on her disability XXXX as follows:

Allegation 1: The College retaliated against the Complainant based on her disability when a College staff member against whom the Complainant had recently filed a disability based grievance was selected to proctor the Complainant's examination and subsequently failed her.

Allegation 2: The College discriminated against the Complainant based on her disability when:

- a. The Complainant was not permitted to register for a course entitled XXXX
- b. The Complainant was not provided with an early copy of her course schedule or an explanation of the number of credits that would transfer from her previous institution.
- c. The Complainant was expelled from the College.

OCR is responsible for enforcing certain civil rights laws, including Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department as well as Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or

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participates in an OCR proceeding. Because the College receives federal financial assistance from the Department, OCR has jurisdiction over it pursuant to the laws noted above.

Before OCR completed its investigation, the College expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the College's programs or activities on the basis of disability.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the College treated the Complainant less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the College had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the College is a pretext, or excuse, for unlawful discrimination.

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, or participates in an OCR proceeding.

When analyzing a claim of retaliation, OCR will look at: 1) whether the Complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); 2) whether the College took a materially adverse action against the Complainant; and 3) whether there is a causal connection between the protected activity and the materially adverse action. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR then determines whether the College has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the College's reason for its action is a pretext, or excuse, for unlawful retaliation.

Factual Background

The Complainant is a student with a disability XXXX registered with the College's disability services office. The Student transferred to the College from XXXX during the XXXX academic year. The Complainant alleges that other, non-disabled students, receive an advance copy of their course schedules well in advance of the start of the semester, which she did not receive. The Complainant also alleges that the College did not provide her with an explanation of the number of credits that successfully transferred from her previous institution, as they typically do for non-disabled students. Additionally, the Complainant claims that she has met all of the pre-requisites necessary to enroll in a course known as XXXX which is required for completion of

her degree, but the College has not permitted her to enroll. Finally, the Complainant alleged that the College discriminated against her based on her disability when it administratively withdrew her from the program. The Complainant also alleged that the College retaliated against her for filing a grievance against several staff members when it subsequently appointed one of them to proctor a final exam for which she received a failing grade.

The Complainant provided OCR with a July 9, 2013 letter from the College stating its belief that the Complainant was under extreme emotional stress and strongly recommending that she seek mental health assistance. The letter goes on to state that the Complainant has exhibited “immature/unstable emotional behavior” in interactions with College staff and that based on these observations and the Complainant’s psycho-educational evaluation, the College felt it was in the Complainant’s best interest to be administratively withdrawn from the program.

OCR’s investigation of the allegations raised by the Complainant raised preliminary concerns that are addressed in the attached Resolution Agreement.

Conclusion

Pursuant to Section 302 of OCR’s *Case Processing Manual*, the College signed the enclosed Resolution Agreement on July 11, 2016 which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR’s investigation, and are consistent with applicable law and regulation. OCR will monitor the College’s implementation of the Agreement until the College is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR’s investigation of the complaint. This letter should not be interpreted to address the College’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR’s determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the College's cooperation in the resolution of this complaint. If you have any questions, please contact Sebastian Amar, the OCR attorney assigned to this complaint, at 202-453-6023 or Sebastian.amar@ed.gov.

Sincerely,

/S/
Alessandro Terenzoni
Supervisory Attorney, Team II
District of Columbia Office
Office for Civil Rights

Enclosure

cc: XXXX